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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,966	07/25/2003	William G. Dennis	MPD-001.01	3962

25181 7590 02/20/2008  
FOLEY HOAG, LLP  
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BOSTON, MA 02110

EXAMINER
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NGUYEN, TUAN VAN

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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02/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,966	<b>Applicant(s)</b> DENNIS, WILLIAM G.	
	<b>Examiner</b> TUAN V. NGUYEN	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31,32,34-43,45-53,55,56,69 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31,32,34-43,45-53,55,56,69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. In previous Office action, claims 1-68 were pending, claims 1-30 and 57-68 were withdrawn from further consideration and claims 31-56 were examined and rejected.

#### ***Amendment After Non-Final Rejection***

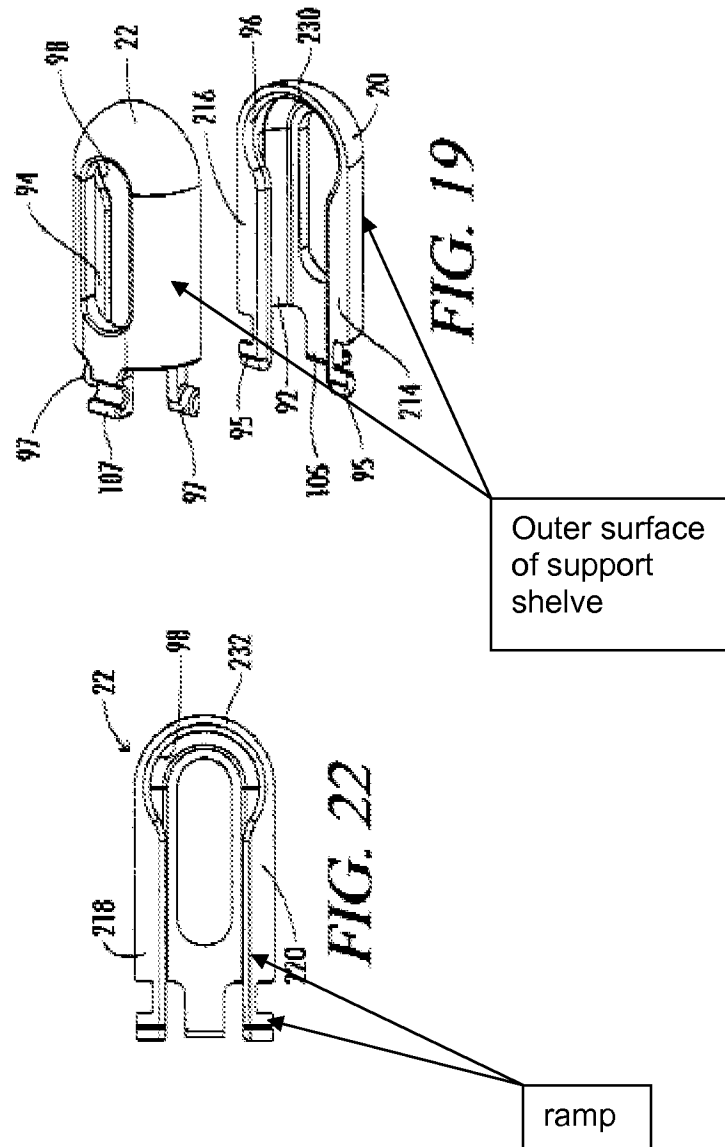
2. According to the Amendment After Non-Final Rejection applicants filed on November 13, 2007, claims 1-30, 33, 44, 54, and 57-68 have been cancelled and claims 69-70 are new. Accordingly, claims 31, 32, 34-43, 45-53, 5, 56 69, and 70 are pending and presented for examination in this present application.
3. Examiner acknowledges that paragraph [082] of the specification has been amended to correct a typographical error. No new matter is added.

#### ***Response to Amendment***

4. Applicant's argument filed on November 13, 2007 with respect to that Figs. 19 and 21 of Shipp's drawings show the elements 95 and 97 are not continuous with the outer surfaces of the respective support shelves has been fully considered but they are not persuasive. Figures 19 and 22 of Shipp's drawings clearly show a pair of ramp, which includes elements 95 connected with first jaw side 214 and 216 (see Fig. 19), and elements 97 connected with second jaw side 218 and 220 (see Fig. 20), wherein the ramps having outer surfaces that aligned with the respective

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support rails 61 and 63 of the clip holder 58 (see Fig. 16) and are continuous with the outer surfaces of the respective support shelves (see Figs. 19 and 22 copied below this paragraph).



***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 31, 32, 34-43, 45-53, 5, 56 69, and 70 are rejected under 35**

**U.S.C. 102(b) as being anticipated by Shipp et al. (U.S. 6,350,269).**

7. Shipp discloses (see Figs. 1-9 and 13-34) an occlusion clip applicator 10 for storing and applying a plurality of occlusion clips 64 (see Fig. 9), the applicator comprising:
- a. a jaw push tube 18 having proximal and distal push tube ends and a jaw push tube interior;
  - b. an elongate clip holder 58 (see Figs. 13-18 and col. 6, lines 49-63) configured to hold the plurality of occlusion clips, the clip holder being formed as a channel having first and second support rails 61 and 63 attached thereto, the first and second support rails being substantially parallel and in alignment with each other and defining a gap with a gap width dimension that is greater than the main body width of the occlusion clips 64 and less than the maximum arcuate width 72 (see Fig. 9) of the occlusion clips, the clip holder having proximal and distal clip holder ends and being disposed inside the jaw push tube interior;

- c. a clip pusher 102 (see Figs. 25-28 and see col. 9, lines 23-55) having an elongate support member having upper and lower sides with a plurality of clip push prong 104 or fingers 104 attached to the lower side wherein the finger 104 configured to engage the upper arcuate portions 72, 74 of the occlusion clips 64 so that distal movement of the clip pusher causes the occlusion clips to slide distally along the support rails 61, 63, the support member 102 being mounted within the jaw push tube interior substantially parallel to the clip holder 58 with at least a portion of each clip push finger extending downward into the channel;
- d. a pair of jaws 20, 22, (see Fig. 19-24 and see col. 6, lines 37-49) each jaw having proximal and distal jaw ends, an inner engaging side and an opposite outer side, a clip slot 94 formed through the jaw from the inner engaging side to the outer side and extending distally from and through the proximal jaw end, and a pair of parallel support shelves 214, 216 bounding at least a portion of the clip slot, the jaws being pivotably mounted at their proximal ends 97 to the distal clip holder end 99 (see Figs. 18 and 19) and being configured for engagement by the distal tube end at 109, 111 for selective rotation between a fully open position and a closed position wherein the engaging sides of the jaws are in contact with each other, wherein the clip slot has a width dimension that is greater than the main body width of the occlusion clips and less than the maximum arcuate width of the occlusion clips; an releasing opening 96, 98 or

- ejection opening at the distal jaw end, wherein the ejection opening having a width that is greater than the maximum arcuate 72 of the occlusion clip 64;
- e. a pair of ramp, which includes elements 95 connected with first jaw side 214 and 216 (see Fig. 19), and elements 97 connected with second jaw side 218 and 220 (see Fig. 20), wherein the ramps having outer surfaces that aligned with the respective support rails 61 and 63 of the clip holder 58 (see Fig. 16) and are continuous with the outer surfaces of the respective support shelves wherein the ramps being aligned with the support shelves 214, 216 and support rails 61, 63 of clip holder 58;
  - f. a handle assembly 12 and 16; trigger 16 associated or connected a piston 38 or actuator to actuate the jaw 20, 22 open or close; a barrel rotator 14 or a tube housing defining a bore 24 or a tube chamber (see col. 9, lines 57-60), the proximal push tube end of tube 18, the proximal clip holder end of clip holder 58 and at least a portion of the actuator 38 being disposed in the tube chamber (see col. 11, line 14 to col. 12, line 15).
8. Referring to **claim 42**, the occlusion clip in the preamble has been carefully considered but deemed not to impose any structural limitation on the claims distinguishable over the applicator as disclosed by Shipp which is capable of being used as claimed by the applicant. Extrinsic evidence, US Pub. No. 2006/0129168, Shipp discloses such a clip as claimed in the preamble by the applicant (see Fig.

1), further, Shipp discloses the clip can be deployed by a clip applicator as discloses in US Patent No. 6,350,269 issued to Shipp (see paragraph [0043]).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TUAN V. NGUYEN whose telephone number is (571)272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731